

AG Contract No. KR96-2561-TRN  
ADOT ECS File No. JPA 96-114  
Project: Fernwood-Wupatki on US 89  
TRACS No. H 3049 01C  
Section: Reconstruct Forest  
Service Roads and Antelope  
Migration Corridor.

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE UNITED STATES DEPARTMENT OF AGRICULTURE  
COCONINO NATIONAL FOREST

THIS AGREEMENT is entered into 27 March, 1997,  
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-  
954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and the  
UNITED STATES DEPARTMENT OF AGRICULTURE, COCONINO NATIONAL  
FOREST, acting by and through its Forest Supervisor (the "Forest  
Service").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The Forest Service is empowered by the Intermodel  
Surface Transportation Efficiency Act of 1991, P.L. 102-240 and  
the National Forest Roads and Trails Act of 1964, P.L. 88-657. to  
enter into this agreement and has authorized the undersigned to  
execute this agreement on behalf of the Forest Service.

3. The State is preparing a Design Concept Report (DCR) and  
Environmental Assessment (EA) which provide for the improvement  
of US 89 from MP 425.78 to MP 442.3. The DCR provides for the  
closing of several existing access points from Highway 89 to  
adjoining National Forest land. The State and the Forest Service  
agree that combining the existing access points into a single new  
access point is in the best interests of both agencies.  
Consolidation of the access will eliminate the need for median  
crossovers resulting in improved safety for the traveling public  
and cost savings for the State.

THEREFORE, in consideration of the mutual agreements expressed  
herein, it is agreed as follows:

NO. <u>21458</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>03/27/97</u>
<u>Jane Lee Hull</u> Secretary of State
By <u>Vicky Graenwood</u>

## II. SCOPE

### 1. The Forest Service will:

a. Design and prepare plans for the connector roads to consolidate the existing Forest Service access roads west of US 89 to a single new access road at the Sunset Crater turnoff.

b. Provide the State the preferred locations for locked gates in the right of way fence to be included in the construction projects.

c. Develop plans for re-establishment of the antelope migration corridor on the east side of US 89 near Wupatki.

d. Conduct cultural resource studies in the areas of the new connector roads and roads identified for obliteration under the antelope mitigation and be responsible for avoidance or all mitigation of any resources encountered for the antelope mitigation and road alignment.

e. Advertise for competitive bid and award one or more construction projects to construct the new connector roads and antelope migration corridor and be responsible for construction administration of the project(s).

f. At the time of bid advertisement, invoice the State for the cost of the Project(s), in a total amount not to exceed \$529,410.00 for construction of the new connector roads and \$37,310.00 to re-establish the antelope migration corridor.

### 2. The State will:

a. Complete the Design Concept Report and the Environmental Assessment for US 89 from MP 425.78 to MP 442.3. The DCR and the EA shall indicate the closure of several existing Forest Service access points and the creation by others of a new access at the Sunset Crater turnoff.

b. Provide funding to design and construct the new Forest Service connection to US89 at the Sunset Crater turnoff (MP 430.42). The amount is estimated to be \$529,410.00 including design, construction and construction engineering.

c. Provide funding to re-establish the antelope migration corridor on the east side of US 89 near Wupatki. The amount is estimated to be \$37,310.00 including design, engineering, construction, and resource specialist support. The State will provide the archaeological surveys for the state highway and the antelope mitigation vegetative treatment.

d. Pay the Forest Service within 30 days after receipt and approval of an invoice, in a total amount not to exceed \$529,410.00 for construction of the new connector roads and \$37,310.00 to re-establish the antelope migration corridor.

### III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said payment and improvements; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the commencement of performance under this contract, upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon filing with the Arizona Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 pertaining to conflicts of interest on behalf of State employees.

4. The provisions of Arizona Revised Statutes Section 35-214 pertaining to audit are applicable to this contract.

5. Applicable laws of the State and Federal government shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement, compliant with applicable laws and regulations of the State and Federal government, and acceptable to the State and Federal government. Such process shall include provision for arbitration.

6. No member of, or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

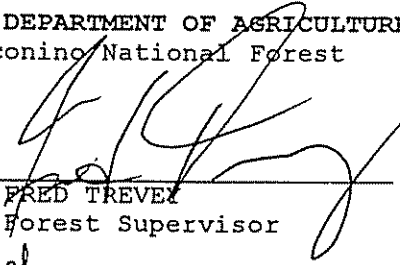
Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Coconino National Forest  
Forest Supervisor  
2323 E. Greenlaw Lane  
Flagstaff, AZ 86004


8. Attached hereto and incorporated herein is the written determination of legal counsel that the State is authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

US DEPARTMENT OF AGRICULTURE  
Coconino National Forest

By   
FRED TREVEL  
Forest Supervisor  
pl

STATE OF ARIZONA  
Department of Transportation

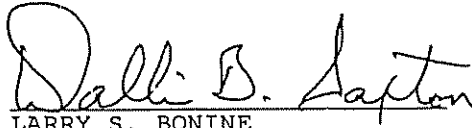
By   
PETER L. ENO  
Contract Administrator

JPA 96-114

RESOLUTION

BE IT RESOLVED on this 15th day of August 1996, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, enter into an agreement with the Department of Agriculture, Coconino Forest Service to reconstruct Forest Service roads and an antelope migration corridor.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

A handwritten signature in dark ink, appearing to read "Dalli B. Lipton". The signature is written in a cursive, flowing style with a large initial "D".

for LARRY S. BONINE  
Director

## DETERMINATION

Arizona contract No. JPA 96-114, which is an agreement between public agencies; to wit; the state of ARIZONA, DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE, has been reviewed by the undersigned for the United States who has determined that it is in the proper form and within the powers and authority granted to the United States.

No opinion is expressed as to the authority of the State of Arizona to enter into said agreement.

DATED this 13<sup>th</sup> day of March, 1997.

THE UNITED STATES OF AMERICA

BY Park Hilliard



GRANT WOODS  
ATTORNEY GENERAL

STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
1275 WEST WASHINGTON, PHOENIX 85007-2926

TRN Main: (602) 542-1680  
Direct: (602) 542-8837  
Fax: (602) 542-3646  
MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR96-2561TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED March 21, 1997.

GRANT WOODS  
Attorney General

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section